



Early Childhood, Special Education, and Title Program Services

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November 13, 2012

Ms. Nancy Jackson, Chairperson
Citizens Regulatory Review Board
900 SW Jackson Street
Topeka, Kansas 66612

Re: Proposed regulations K.A.R. 91-42-1 and 91-42-2

Dear Ms. Jackson:

Pursuant to Exec. Or. 039143, 30 *Kansas Register* 121,126 (2011) I enclose a copy of the notice announcing a public hearing the Kansas State Board of Education will hold on February 12, 2013, at 1:30 p.m., or as soon thereafter as possible, to consider proposed regulations K.A.R. 91-42-1 and 91-42-2, concerning emergency safety interventions. A copy of the proposed regulations and the economic impact statements are also enclosed.

If you have any questions concerning these regulations, please do not hesitate to contact me.

Sincerely,

Jana S. Bradfield
Special Education Services Assistant Director

JSB:lnj

Enclosures

(To be published in the Kansas Register on November 15, 2012.)

Kansas State Board of Education

**NOTICE OF PUBLIC HEARING
ON PROPOSED ADMINISTRATIVE REGULATIONS**

The State Board of Education will conduct a public hearing at 1:30 p.m., or as soon thereafter as possible, on Tuesday, February 12, 2013 in the Board Room of the State Education Building, 120 S.E. Tenth Avenue, Topeka, to consider proposed regulations of emergency safety interventions, K.A.R. 91-42-1 and K.A.R. 91-42-2. A summary of the proposed regulation and its economic impact follows.

K.A.R. 91-42-1 and K.A.R. 91-42-2

These regulations govern the use of Emergency Safety Interventions (seclusion and restraint) with all students in all Kansas schools. The purpose of the regulations is to establish definitions and requirements in the event Emergency Safety Intervention are used in Kansas schools.

No economic impact is anticipated for the State Board of Education, school districts, other governmental entities, private businesses or individuals.

A copy of the proposed regulation and its economic impact statement may be obtained by contacting the Office of General Counsel at the address above prior to the date of the hearing or by email to ogc@ksde.org.

All interested persons will be given a reasonable opportunity at the hearing to present their views or arguments, either orally or in writing, in regard to the proposed regulations. In addition, the period of public notice hereby provided constitutes a public comment period for the purpose of receiving written public comments on the proposed regulations. Such written comments may be submitted by mail to the secretary of the State Board of Education at the above address or by email to pplamann@ksde.org. The hearing shall be conducted in compliance with the public hearing procedures of the State Board of Education.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Karen Watney at (785) 296-3906, or (TDD) (785) 296-8172, or by e-mail to kwatney@ksde.org

Certified by:

KANSAS STATE BOARD OF EDUCATION

Dianne DeBacker
Commissioner of Education

By: David T. Dennis, Chairperson

**KANSAS STATE BOARD OF EDUCATION
ECONOMIC IMPACT STATEMENT
K.A.R. 91-42-1 and K.A.R. 91-42-2**

I. Summary of Proposed Regulation, Including Its Purpose.

K.A.R. 91-42-1 and K.A.R. 91-42-2 are new regulations that govern the use of emergency safety interventions (seclusion and restraint) with all students in all Kansas schools. The purpose of the regulations is to establish definitions and requirements for the use of emergency safety interventions in Kansas schools.

II. Reasons or Reasons the Proposed Regulations Are Required, Including Whether the Regulations Are Mandated by Federal Law.

The proposed regulations are required to establish governing practices for the use of emergency safety interventions in Kansas schools. These regulations are not mandated by federal law.

III. Anticipated Economic Impact upon the Kansas State Board of Education.

An annual report of all incidents of emergency safety intervention is reviewed by the Kansas State Board of Education. The cost to the Kansas State Board of Education in reviewing this report is minimal. There is no other anticipated economic impact to the Kansas State Board of Education.

IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.

The Kansas State Board of Education does not anticipate economic impact on other governmental agencies or on private business or individuals.

V. Anticipated Economic Impact upon School Districts.

Adoption of these regulations is anticipated to have a minimal economic impact upon school districts, if any. Implementation of the regulatory requirements allows for customization by the local school district. Emergency safety interventions are to be

used in emergency situations only and thus it is anticipated the interventions will be used sparingly, if at all. The notice and reporting requirements found in the regulations are anticipated to be transitioned into work the school districts are currently doing with no additional economic impact.

VI. Less Costly or Intrusive Methods That Were Considered, but Rejected and the Reason for Rejection.

The Kansas State Board of Education has developed regulations that are anticipated to have a minimal economic impact; therefore no other methods were considered.

Additionally, by creating regulations that leave most implementation decisions to school districts, the Kansas State Board of Education believes it has come up with the least intrusive method and therefore no consideration of other methods was necessary.

Article 42. - Emergency Safety Interventions

91-42-1. Definitions. As used in this regulation and in K.A.R. 91-42-2, each of the following terms shall have the meaning specified in this regulation: (a) "Chemical restraint" means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement.

(b) "District" means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(c) "Emergency safety intervention" means the use of seclusion or physical restraint when a student presents an immediate danger to self or others. Violent action that is destructive of property may necessitate the use of an emergency safety intervention.

(d) "Mechanical restraint" means any device or object used to limit a student's movement.

(e) "Physical escort" means the temporary touching or holding the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location.

(f) "Physical restraint" means bodily force used to substantially limit a student's movement.

(g) "School" means any learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school, that receives public funding or over which the Kansas state department of education has regulatory authority.

(h) "Seclusion", when used with a student, means that all the following conditions are met:

(1) The student is placed in an enclosed area by school personnel.

(2) The student is purposefully isolated from adults and peers.

(3) The student is prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(i) "Time-out" means a behavioral intervention in which a student is temporarily removed from a learning activity without being confined.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective P-_____.)

91-42-2. Policy, documentation, and reporting requirements. (a) Each district shall develop and implement written policies to govern the use of emergency safety interventions over all schools. At a minimum, written district policies shall conform to the definitions and requirements of these regulations, including that seclusion and physical restraint shall be used only when student conduct meets the definition of necessitating an emergency safety intervention. Parents shall be annually provided with the written policies on the use of emergency safety interventions. The written policies shall include the following:

(1) Policies and procedures for the use of emergency safety interventions: (A)

Policies and procedures shall prohibit the following:

(i) The use of prone, or face-down, physical restraint; supine, or face-up, physical restraint; physical restraint that obstructs the airway of a student; or any physical restraint that impacts a student's primary mode of communication;

(ii) the use of chemical restraint, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue these treatments; and

(iii) the use of mechanical restraint, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure students during transportation; and

(B) written policies developed pursuant to this regulation shall be accessible on each school's web site and shall be included in each school's code of conduct, school safety plan, or student handbook, or any combination of these;

(2) school personnel training consistent with nationally recognized training programs on the use of emergency safety interventions:

(A) Training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;

(B) training shall be designed to meet the needs of personnel as appropriate to their duties and potential need for emergency safety interventions; and

(C) schools and programs shall maintain written or electronic documentation on training provided and lists of participants in each training;

(3) written parental notification whenever an emergency safety intervention is used. This notification shall be provided within two school days;

(4) documentation of any incident of emergency safety intervention, which shall include the date and time of the intervention, the type of intervention, the length of time the intervention was used, and the school personnel who participated in or supervised the intervention;

(5) procedures for the collection, maintenance, and periodic review of the use of emergency safety intervention at each school, which shall include the documentation described in paragraph(a)(4); and

(6) local dispute resolution processes. Each district shall develop policies that, at a minimum, shall include the following:

(A) A complaint investigation procedure;

(B) a procedure for parents to present written complaints to the local board of education to initiate complaint investigation by the local board of education; and

(C) a procedure for parents, the school, and the Kansas state department of education to receive written findings of fact and, if necessary, corrective action from the local board of education within 30 days of filing of a complaint by a parent.

(b) Each district shall develop a system to collect and maintain documentation for each use of an emergency safety intervention, which shall include the information described in paragraph (a)(4).

(1) Information maintained by the school shall be compiled and submitted, at least biannually, to the district superintendent or district designee.

(2) Documentation of any school's or district's use of emergency safety intervention shall be provided to the Kansas state department of education upon written request of the Kansas state department of education.

(3) Each district shall report all incidents of emergency safety intervention to the Kansas state department of education by the date and in the form specified by the Kansas state department of education. An annual report shall be provided by the Kansas state department of education to the Kansas state board of education.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution;
effective P-_____.)